

Introduced by Senator Alquist

December 6, 2004

An act to repeal and add Section 803 of the Penal Code, relating to criminal procedure, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 16, as introduced, Alquist. Criminal Procedure.

Existing law provides various statutes of limitation for various offenses. Existing law, operative until March 6, 2005, does not include certain provisions of law reviving expired statutes of limitation for certain sex offenses that have been held to be unconstitutional and reorganizes certain other provisions relating to time limitations on filing criminal charges. Other provisions of law effective March 6, 2005, which contain those unconstitutional provisions, also provide that the applicable period of limitations does not begin to run on a violation of prohibitions against engaging in certain transactions involving monetary instruments connected to criminal activity until the offense has been, or reasonably could have been, discovered.

This bill would provide that the provisions of existing law described above which delete unconstitutional provisions regarding the statute of limitation for specified sex offenses and reorganize other provisions remain in effect.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 803 of the Penal Code, as amended by Chapter 368 of the Statutes of 2004, is repealed.~~803. (a) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.~~

~~(b) No time during which prosecution of the same person for the same conduct is pending in a court of this state is a part of a limitation of time prescribed in this chapter.~~

~~(c) A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison, a material element of which is fraud or breach of a fiduciary obligation, the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by a public officer, employee, or appointee, including, but not limited to, the following offenses:~~

~~(1) Grand theft of any type, forgery, falsification of public records, or acceptance of a bribe by a public official or a public employee.~~

~~(2) A violation of Section 72, 118, 118a, 132, or 134.~~

~~(3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code.~~

~~(4) A violation of Section 1090 or 27443 of the Government Code.~~

~~(5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code.~~

~~(6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.~~

~~(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.~~

~~(8) A violation of Section 22430 of the Business and Professions Code.~~

~~(9) A violation of Section 10690 of the Health and Safety Code.~~

~~(10) A violation of Section 529a.~~

~~(11) A violation of subdivision (d) or (e) of Section 368.~~

~~(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 within the limitations of time prescribed by this chapter, and no time up to a maximum of three years during which the defendant is not within the state shall be a part of those limitations.~~

~~(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of, or Part 4 (commencing with Section 41500) of Division 26 of, the Health and Safety Code, or under Section 386, or offenses under Chapter 5 (commencing with Section 2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of Division 2 of, Section 6126 of, Chapter 10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of, the Business and Professions Code.~~

~~(f) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a responsible adult or agency by a child under 18 years of age that the child is a victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.~~

~~(2) For purposes of this subdivision, a “responsible adult” or “agency” means a person or agency required to report pursuant to Section 11166. This subdivision applies only if both of the following occur:~~

~~(A) The limitation period specified in Section 800, 801, or 801.1, whichever is later, has expired.~~

~~(B) The defendant has committed at least one violation of Section 261, 286, 288, 288a, 288.5, 289, or 289.5 against the same victim within the limitation period specified for that crime in Section 800, 801, or 801.1.~~

~~(g) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under the age of~~

~~1 18 years, was the victim of a crime described in Section 261,
2 286, 288, 288a, 288.5, 289, or 289.5.~~

~~3 (2) This subdivision applies only if all of the following occur:~~

~~4 (A) The limitation period specified in Section 800, 801, or
5 801.1, whichever is later, has expired.~~

~~6 (B) The crime involved substantial sexual conduct, as
7 described in subdivision (b) of Section 1203.066, excluding
8 masturbation that is not mutual.~~

~~9 (C) There is independent evidence that corroborates the
10 victim's allegation. If the victim was 21 years of age or older at
11 the time of the report, the independent evidence shall clearly and
12 convincingly corroborate the victim's allegation.~~

~~13 (3) No evidence may be used to corroborate the victim's
14 allegation that otherwise would be inadmissible during trial.
15 Independent evidence does not include the opinions of mental
16 health professionals.~~

~~17 (h) (1) Notwithstanding any other limitation of time described
18 in this chapter, a criminal complaint may be filed within one year
19 of the date on which the identity of the suspect is conclusively
20 established by DNA testing, if both of the following conditions
21 are met:~~

~~22 (A) The crime is one that is described in subparagraph (A) of
23 paragraph (2) of subdivision (a) of Section 290.~~

~~24 (B) The offense was committed prior to January 1, 2001, and
25 biological evidence collected in connection with the offense is
26 analyzed for DNA type no later than January 1, 2004, or the
27 offense was committed on or after January 1, 2001, and
28 biological evidence collected in connection with the offense is
29 analyzed for DNA type no later than two years from the date of
30 the offense.~~

~~31 (2) For purposes of this section, "DNA" means
32 deoxyribonucleic acid.~~

~~33 (i) For any crime, the proof of which depends substantially
34 upon evidence that was seized under a warrant, but which is
35 unavailable to the prosecuting authority under the procedures
36 described in People v. Superior Court (Laff) (2001) 25 Cal.4th
37 703, People v. Superior Court (Bauman & Rose) (1995) 37
38 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to
39 claims of evidentiary privilege or attorney work product, the
40 limitation of time prescribed in this chapter shall be tolled from~~

1 the time of the seizure until final disclosure of the evidence to the
2 prosecuting authority. Nothing in this section otherwise affects
3 the definition or applicability of any evidentiary privilege or
4 attorney work product.

5 (j) (1) In a criminal investigation involving child sexual abuse
6 as described in subdivision (f) or (g), when the limitations period
7 set forth therein has not expired, that period shall be tolled from
8 the time a party initiates litigation challenging a grand jury
9 subpoena until the end of that litigation, including any associated
10 writ or appellate proceeding, or until the final disclosure of
11 evidence to the investigating or prosecuting agency, if that
12 disclosure is ordered pursuant to the subpoena after the litigation.

13 (2) Nothing in this subdivision affects the definition or
14 applicability of any evidentiary privilege.

15 (3) This subdivision shall not apply where a court finds that
16 the grand jury subpoena was issued or caused to be issued in bad
17 faith.

18 (k) As used in subdivisions (f) and (g), Section 289.5 refers to
19 the statute enacted by Chapter 293 of the Statutes of 1991
20 relating to penetration by an unknown object.

21 SEC. 2. Section 803 of the Penal Code, as amended by
22 Chapter 2 of the Statutes of 2003–04 Fourth Extraordinary
23 Session, is repealed.⁸⁰³—(a) Except as provided in this section,
24 a limitation of time prescribed in this chapter is not tolled or
25 extended for any reason.

26 (b) No time during which prosecution of the same person for
27 the same conduct is pending in a court of this state is a part of a
28 limitation of time prescribed in this chapter.

29 (c) A limitation of time prescribed in this chapter does not
30 commence to run until the discovery of an offense described in
31 this subdivision. This subdivision applies to an offense
32 punishable by imprisonment in the state prison, a material
33 element of which is fraud or breach of a fiduciary obligation, the
34 commission of the crimes of theft or embezzlement upon an elder
35 or dependent adult, or the basis of which is misconduct in office
36 by a public officer, employee, or appointee, including, but not
37 limited to, the following offenses:

38 (1) Grand theft of any type, forgery, falsification of public
39 records, or acceptance of a bribe by a public official or a public
40 employee.

~~(2) A violation of Section 72, 118, 118a, 132, 134, or 186.10.~~

~~(3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code.~~

~~(4) A violation of Section 1090 or 27443 of the Government Code.~~

~~(5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code.~~

~~(6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.~~

~~(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.~~

~~(8) A violation of Section 22430 of the Business and Professions Code.~~

~~(9) A violation of Section 10690 of the Health and Safety Code.~~

~~(10) A violation of Section 529a.~~

~~(11) A violation of subdivision (d) or (e) of Section 368.~~

~~(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 within the limitations of time prescribed by this chapter, and no time up to a maximum of three years during which the defendant is not within the state shall be a part of those limitations.~~

~~(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of, or Part 4 (commencing with Section 41500) of Division 26 of, the Health and Safety Code, or under Section 386, or offenses under Chapter 5 (commencing with Section 2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of Division 2 of, Section 6126 of, Chapter 10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of, the Business and Professions Code.~~

~~(f) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year~~

1 of the date of a report to a responsible adult or agency by a child
2 under 18 years of age that the child is a victim of a crime
3 described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

4 (2) For purposes of this subdivision, a “responsible adult” or
5 “agency” means a person or agency required to report pursuant to
6 Section 11166. This subdivision applies only if both of the
7 following occur:

8 (A) The limitation period specified in Section 800 or 801 has
9 expired.

10 (B) The defendant has committed at least one violation of
11 Section 261, 286, 288, 288a, 288.5, 289, or 289.5 against the
12 same victim within the limitation period specified for that crime
13 in either Section 800 or 801.

14 (3) (A) This subdivision applies to a cause of action arising
15 before, on, or after January 1, 1990, the effective date of this
16 subdivision, and it shall revive any cause of action barred by
17 Section 800 or 801 if any of the following occurred or occurs:

18 (i) The complaint or indictment was filed on or before January
19 1, 1997, and it was filed within the time period specified in this
20 subdivision.

21 (ii) The complaint or indictment is or was filed subsequent to
22 January 1, 1997, and it is or was filed within the time period
23 specified within this subdivision.

24 (iii) The victim made the report required by this subdivision to
25 a responsible adult or agency after January 1, 1990, and a
26 complaint or indictment was not filed within the time period
27 specified in this subdivision, but a complaint or indictment is
28 filed no later than 180 days after the date on which either a
29 published opinion of the California Supreme Court, deciding
30 whether retroactive application of this section is constitutional,
31 becomes final or the United States Supreme Court files an
32 opinion deciding the question of whether retroactive application
33 of this subdivision is constitutional, whichever occurs first.

34 (iv) The victim made the report required by this subdivision to
35 a responsible adult or agency after January 1, 1990, and a
36 complaint or indictment was filed within the time period
37 specified in this subdivision, but the indictment, complaint, or
38 subsequently filed information was dismissed, but a new
39 complaint or indictment is or was filed no later than 180 days
40 after the date on which either a published opinion of the

1 California Supreme Court, deciding whether retroactive
2 application of this section is constitutional, becomes final or the
3 United States Supreme Court files an opinion deciding the
4 question of whether retroactive application of this subdivision is
5 constitutional, whichever occurs first.

6 (B) (i) If the victim made the report required by this
7 subdivision to a responsible adult or agency after January 1,
8 1990, and a complaint or indictment was filed within the time
9 period specified in this subdivision, but the indictment,
10 complaint, or subsequently filed information was dismissed, a
11 new complaint or indictment may be filed notwithstanding any
12 other provision of law, including, but not limited to, subdivision
13 (c) of Section 871.5 and subdivision (b) of Section 1238.

14 (ii) An order dismissing an action filed under this subdivision,
15 which is entered or becomes effective at any time prior to 180
16 days after the date on which either a published opinion of the
17 California Supreme Court, deciding the question of whether
18 retroactive application of this section is constitutional, becomes
19 final or the United States Supreme Court files an opinion
20 deciding the question of whether retroactive application of this
21 subdivision is constitutional, whichever occurs first, may not be
22 considered an order terminating an action within the meaning of
23 Section 1387.

24 (iii) Any ruling regarding the retroactivity of this subdivision
25 or its constitutionality made in the course of the previous
26 proceeding, including any review proceeding, may not be
27 binding upon refiling.

28 (g) (1) Notwithstanding any other limitation of time described
29 in this chapter, a criminal complaint may be filed within one year
30 of the date of a report to a California law enforcement agency by
31 a person of any age alleging that he or she, while under the age of
32 18 years, was the victim of a crime described in Section 261,
33 286, 288, 288a, 288.5, 289, or 289.5.

34 (2) This subdivision applies only if both of the following
35 occur:

36 (A) The limitation period specified in Section 800 or 801 has
37 expired.

38 (B) The crime involved substantial sexual conduct, as
39 described in subdivision (b) of Section 1203.066, excluding
40 masturbation that is not mutual, and there is independent

1 evidence that clearly and convincingly corroborates the victim's
2 allegation. No evidence may be used to corroborate the victim's
3 allegation that otherwise would be inadmissible during trial.
4 Independent evidence does not include the opinions of mental
5 health professionals.

6 ~~(3) (A) This subdivision applies to a cause of action arising~~
7 ~~before, on, or after January 1, 1994, the effective date of this~~
8 ~~subdivision, and it shall revive any cause of action barred by~~
9 ~~Section 800 or 801 if any of the following occurred or occurs:~~

10 ~~(i) The complaint or indictment was filed on or before January~~
11 ~~1, 1997, and it was filed within the time period specified in this~~
12 ~~subdivision.~~

13 ~~(ii) The complaint or indictment is or was filed subsequent to~~
14 ~~January 1, 1997, and it is or was filed within the time period~~
15 ~~specified within this subdivision.~~

16 ~~(iii) The victim made the report required by this subdivision to~~
17 ~~a law enforcement agency after January 1, 1994, and a complaint~~
18 ~~or indictment was not filed within the time period specified in~~
19 ~~this subdivision, but a complaint or indictment is filed no later~~
20 ~~than 180 days after the date on which either a published opinion~~
21 ~~of the California Supreme Court, deciding the question of~~
22 ~~whether retroactive application of this subdivision is~~
23 ~~constitutional, becomes final or the United States Supreme Court~~
24 ~~files an opinion deciding the question of whether retroactive~~
25 ~~application of this subdivision is constitutional, whichever occurs~~
26 ~~first.~~

27 ~~(iv) The victim made the report required by this subdivision to~~
28 ~~a law enforcement agency after January 1, 1994, and a complaint~~
29 ~~or indictment was filed within the time period specified in this~~
30 ~~subdivision, but the indictment, complaint, or subsequently filed~~
31 ~~information was dismissed, but a new complaint or indictment is~~
32 ~~filed no later than 180 days after the date on which either a~~
33 ~~published opinion of the California Supreme Court, deciding the~~
34 ~~question of whether retroactive application of this subdivision is~~
35 ~~constitutional, becomes final or the United States Supreme Court~~
36 ~~files an opinion deciding the question of whether retroactive~~
37 ~~application of this subdivision is constitutional, whichever occurs~~
38 ~~first.~~

39 ~~(B) (i) If the victim made the report required by this~~
40 ~~subdivision to a law enforcement agency after January 1, 1994,~~

1 and a complaint or indictment was filed within the time period
2 specified in this subdivision, but the indictment, complaint, or
3 subsequently filed information was dismissed, a new complaint
4 or indictment may be filed notwithstanding any other provision
5 of law, including, but not limited to, subdivision (c) of Section
6 871.5 and subdivision (b) of Section 1238.

7 (ii) ~~An order dismissing an action filed under this subdivision,~~
8 ~~which is entered or becomes effective at any time prior to 180~~
9 ~~days after the date on which either a published opinion of the~~
10 ~~California Supreme Court, deciding the question of whether~~
11 ~~retroactive application of this section is constitutional, becomes~~
12 ~~final or the United States Supreme Court files an opinion~~
13 ~~deciding the question of whether retroactive application of this~~
14 ~~subdivision is constitutional, whichever occurs first, may not be~~
15 ~~considered an order terminating an action within the meaning of~~
16 ~~Section 1387.~~

17 (iii) ~~Any ruling regarding the retroactivity of this subdivision~~
18 ~~or its constitutionality made in the course of the previous~~
19 ~~proceeding, by any trial court or any intermediate appellate court,~~
20 ~~may not be binding upon refiling.~~

21 (h) (1) ~~Notwithstanding any other limitation of time described~~
22 ~~in this chapter, a criminal complaint may be filed within one year~~
23 ~~of the date of a report to a California law enforcement agency by~~
24 ~~a person under 21 years of age, alleging that he or she, while~~
25 ~~under 18 years of age, was the victim of a crime described in~~
26 ~~Section 261, 286, 288, 288a, 288.5, 289, or 289.5.~~

27 (2) ~~This subdivision applies only if both of the following~~
28 ~~occur:~~

29 (A) ~~The limitation period specified in Section 800 or 801 has~~
30 ~~expired.~~

31 (B) ~~The crime involved substantial sexual conduct, as~~
32 ~~described in subdivision (b) of Section 1203.066, excluding~~
33 ~~masturbation that is not mutual, and there is independent~~
34 ~~evidence that corroborates the victim's allegation. No evidence~~
35 ~~may be used to corroborate the victim's allegation that otherwise~~
36 ~~would be inadmissible during trial. Independent evidence does~~
37 ~~not include the opinions of mental health professionals.~~

38 (3) ~~This subdivision applies to a cause of action arising before,~~
39 ~~on, or after January 1, 2002, the effective date of this subdivision,~~
40 ~~and it shall revive any cause of action barred by Section 800 or~~

1 ~~801 if the complaint or indictment was filed within the time~~
2 ~~period specified by this subdivision.~~

3 ~~(i) (1) Notwithstanding the limitation of time described in~~
4 ~~Section 800, the limitations period for commencing prosecution~~
5 ~~for a felony offense described in subparagraph (A) of paragraph~~
6 ~~(2) of subdivision (a) of Section 290, where the limitations period~~
7 ~~set forth in Section 800 has not expired as of January 1, 2001, or~~
8 ~~the offense is committed on or after January 1, 2001, shall be 10~~
9 ~~years from the commission of the offense, or one year from the~~
10 ~~date on which the identity of the suspect is conclusively~~
11 ~~established by DNA testing, whichever is later, provided,~~
12 ~~however, that the one-year period from the establishment of the~~
13 ~~identity of the suspect shall only apply when either of the~~
14 ~~following conditions is met:~~

15 ~~(A) For an offense committed prior to January 1, 2001,~~
16 ~~biological evidence collected in connection with the offense is~~
17 ~~analyzed for DNA type no later than January 1, 2004.~~

18 ~~(B) For an offense committed on or after January 1, 2001,~~
19 ~~biological evidence collected in connection with the offense is~~
20 ~~analyzed for DNA type no later than two years from the date of~~
21 ~~the offense.~~

22 ~~(2) In the event the conditions set forth in subparagraph (A) or~~
23 ~~(B) of paragraph (1) are not met, the limitations period for~~
24 ~~commencing prosecution for a felony offense described in~~
25 ~~subparagraph (A) of paragraph (2) of subdivision (a) of Section~~
26 ~~290, where the limitations period set forth in Section 800 has not~~
27 ~~expired as of January 1, 2001, or the offense is committed on or~~
28 ~~after January 1, 2001, shall be 10 years from the commission of~~
29 ~~the offense.~~

30 ~~(3) For purposes of this section, “DNA” means~~
31 ~~deoxyribonucleic acid.~~

32 ~~(j) For any crime, the proof of which depends substantially~~
33 ~~upon evidence that was seized under a warrant, but which is~~
34 ~~unavailable to the prosecuting authority under the procedures~~
35 ~~described in People v. Superior Court (Laff) (2001) 25 Cal.4th~~
36 ~~703, People v. Superior Court (Bauman & Rose) (1995) 37~~
37 ~~Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to~~
38 ~~claims of evidentiary privilege or attorney work product, the~~
39 ~~limitation of time prescribed in this chapter shall be tolled from~~
40 ~~the time of the seizure until final disclosure of the evidence to the~~

1 ~~prosecuting authority. Nothing in this section otherwise affects~~
2 ~~the definition or applicability of any evidentiary privilege or~~
3 ~~attorney work product.~~

4 ~~(k) (1) In a criminal investigation involving child sexual~~
5 ~~abuse as described in subdivision (g) or (h), when the limitations~~
6 ~~period set forth therein has not expired, that period shall be tolled~~
7 ~~from the time a party initiates litigation challenging a grand jury~~
8 ~~subpoena until the end of that litigation, including any associated~~
9 ~~writ or appellate proceeding, or until the final disclosure of~~
10 ~~evidence to the investigating or prosecuting agency, if that~~
11 ~~disclosure is ordered pursuant to the subpoena after the litigation.~~

12 ~~(2) Nothing in this subdivision affects the definition or~~
13 ~~applicability of any evidentiary privilege.~~

14 ~~(3) This subdivision may not apply where a court finds that the~~
15 ~~grand jury subpoena was issued or caused to be issued in bad~~
16 ~~faith.~~

17 ~~(l) As used in subdivisions (f), (g), and (h), Section 289.5~~
18 ~~refers to the statute enacted by Chapter 293 of the Statutes of~~
19 ~~1991 relating to penetration by an unknown object.~~

20 SEC. 3. Section 803 is added to the Penal Code, to read:

21 803. (a) Except as provided in this section, a limitation of
22 time prescribed in this chapter is not tolled or extended for any
23 reason.

24 (b) No time during which prosecution of the same person for
25 the same conduct is pending in a court of this state is a part of a
26 limitation of time prescribed in this chapter.

27 (c) A limitation of time prescribed in this chapter does not
28 commence to run until the discovery of an offense described in
29 this subdivision. This subdivision applies to an offense
30 punishable by imprisonment in the state prison, a material
31 element of which is fraud or breach of a fiduciary obligation, the
32 commission of the crimes of theft or embezzlement upon an elder
33 or dependent adult, or the basis of which is misconduct in office
34 by a public officer, employee, or appointee, including, but not
35 limited to, the following offenses:

36 (1) Grand theft of any type, forgery, falsification of public
37 records, or acceptance of a bribe by a public official or a public
38 employee.

39 (2) A violation of Section 72, 118, 118a, 132, or 134.

1 (3) A violation of Section 25540, of any type, or Section
2 25541 of the Corporations Code.

3 (4) A violation of Section 1090 or 27443 of the Government
4 Code.

5 (5) Felony welfare fraud or Medi-Cal fraud in violation of
6 Section 11483 or 14107 of the Welfare and Institutions Code.

7 (6) Felony insurance fraud in violation of Section 548 or 550
8 of this code or former Section 1871.1, or Section 1871.4, of the
9 Insurance Code.

10 (7) A violation of Section 580, 581, 582, 583, or 584 of the
11 Business and Professions Code.

12 (8) A violation of Section 22430 of the Business and
13 Professions Code.

14 (9) A violation of Section 10690 of the Health and Safety
15 Code.

16 (10) A violation of Section 529a.

17 (11) A violation of subdivision (d) or (e) of Section 368.

18 (d) If the defendant is out of the state when or after the offense
19 is committed, the prosecution may be commenced as provided in
20 Section 804 within the limitations of time prescribed by this
21 chapter, and no time up to a maximum of three years during
22 which the defendant is not within the state shall be a part of those
23 limitations.

24 (e) A limitation of time prescribed in this chapter does not
25 commence to run until the offense has been discovered, or could
26 have reasonably been discovered, with regard to offenses under
27 Division 7 (commencing with Section 13000) of the Water Code,
28 under Chapter 6.5 (commencing with Section 25100) of, Chapter
29 6.7 (commencing with Section 25280) of, or Chapter 6.8
30 (commencing with Section 25300) of, Division 20 of, or Part 4
31 (commencing with Section 41500) of Division 26 of, the Health
32 and Safety Code, or under Section 386, or offenses under
33 Chapter 5 (commencing with Section 2000) of Division 2 of,
34 Chapter 9 (commencing with Section 4000) of Division 2 of,
35 Section 6126 of, Chapter 10 (commencing with Section 7301) of
36 Division 3 of, or Chapter 19.5 (commencing with Section 22440)
37 of Division 8 of, the Business and Professions Code.

38 (f) (1) Notwithstanding any other limitation of time described
39 in this chapter, a criminal complaint may be filed within one year
40 of the date of a report to a responsible adult or agency by a child

1 under 18 years of age that the child is a victim of a crime
2 described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

3 (2) For purposes of this subdivision, a “responsible adult” or
4 “agency” means a person or agency required to report pursuant to
5 Section 11166. This subdivision applies only if both of the
6 following occur:

7 (A) The limitation period specified in Section 800, 801, or
8 801.1, whichever is later, has expired.

9 (B) The defendant has committed at least one violation of
10 Section 261, 286, 288, 288a, 288.5, 289, or 289.5 against the
11 same victim within the limitation period specified for that crime
12 in Section 800, 801, or 801.1.

13 (g) (1) Notwithstanding any other limitation of time described
14 in this chapter, a criminal complaint may be filed within one year
15 of the date of a report to a California law enforcement agency by
16 a person of any age alleging that he or she, while under the age of
17 18 years, was the victim of a crime described in Section 261,
18 286, 288, 288a, 288.5, 289, or 289.5.

19 (2) This subdivision applies only if all of the following occur:

20 (A) The limitation period specified in Section 800, 801, or
21 801.1, whichever is later, has expired.

22 (B) The crime involved substantial sexual conduct, as
23 described in subdivision (b) of Section 1203.066, excluding
24 masturbation that is not mutual.

25 (C) There is independent evidence that corroborates the
26 victim’s allegation. If the victim was 21 years of age or older at
27 the time of the report, the independent evidence shall clearly and
28 convincingly corroborate the victim’s allegation.

29 (3) No evidence may be used to corroborate the victim’s
30 allegation that otherwise would be inadmissible during trial.
31 Independent evidence does not include the opinions of mental
32 health professionals.

33 (h) (1) Notwithstanding any other limitation of time described
34 in this chapter, a criminal complaint may be filed within one year
35 of the date on which the identity of the suspect is conclusively
36 established by DNA testing, if both of the following conditions
37 are met:

38 (A) The crime is one that is described in subparagraph (A) of
39 paragraph (2) of subdivision (a) of Section 290.

1 (B) The offense was committed prior to January 1, 2001, and
2 biological evidence collected in connection with the offense is
3 analyzed for DNA type no later than January 1, 2004, or the
4 offense was committed on or after January 1, 2001, and
5 biological evidence collected in connection with the offense is
6 analyzed for DNA type no later than two years from the date of
7 the offense.

8 (2) For purposes of this section, “DNA” means
9 deoxyribonucleic acid.

10 (I) For any crime, the proof of which depends substantially
11 upon evidence that was seized under a warrant, but which is
12 unavailable to the prosecuting authority under the procedures
13 described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th
14 703, *People v. Superior Court (Bauman & Rose)* (1995) 37
15 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to
16 claims of evidentiary privilege or attorney work product, the
17 limitation of time prescribed in this chapter shall be tolled from
18 the time of the seizure until final disclosure of the evidence to the
19 prosecuting authority. Nothing in this section otherwise affects
20 the definition or applicability of any evidentiary privilege or
21 attorney work product.

22 (j) (1) In a criminal investigation involving child sexual abuse
23 as described in subdivision (f) or (g), when the limitations period
24 set forth therein has not expired, that period shall be tolled from
25 the time a party initiates litigation challenging a grand jury
26 subpoena until the end of that litigation, including any associated
27 writ or appellate proceeding, or until the final disclosure of
28 evidence to the investigating or prosecuting agency, if that
29 disclosure is ordered pursuant to the subpoena after the litigation.

30 (2) Nothing in this subdivision affects the definition or
31 applicability of any evidentiary privilege.

32 (3) This subdivision shall not apply where a court finds that
33 the grand jury subpoena was issued or caused to be issued in bad
34 faith.

35 (k) As used in subdivisions (f) and (g), Section 289.5 refers to
36 the statute enacted by Chapter 293 of the Statutes of 1991
37 relating to penetration by an unknown object.

38 SEC. 4. This act is an urgency statute necessary for the
39 immediate preservation of the public peace, health, or safety

1 within the meaning of Article IV of the Constitution and shall go
2 into immediate effect. The facts constituting the necessity are:
3 In order to prevent deletion of the changes to Section 803 of
4 the Penal Code enacted by Chapter 368 of the Statutes of 2004
5 by the enactment of Chapter 2 of the Statutes of the 2003–04
6 Fourth Extraordinary Session it is necessary that this bill take
7 effect immediately.

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